Remarks

Status of the Application

The pending claims are 1-17. Claims 10-17 have been added, claim 6 is amended to depend from claim 1 and claim 9 was canceled in a prior amendment. Claim 1 has been amended to specify that the solution is used in an OLED device (see application, e.g., at page 1, lines 31-34).

Claims 1-5 stand rejected under 35 U.S.C. § 102.

Claims 1-8 stand rejected under 35 U.S.C. § 103.

Claims 1-4 are provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claim 15 of copending Application No. 10/669,403.

New and Amended Claims

The new claims, 10-17, track the original claims except that "buffer layer materials" is deleted from the Markush group of active materials forming the solution with the specified compound. Claim 1 as amended recites that the claimed solution is for use in an OLED device. Claim 6 is now dependent from claim 1 so that it relates to a solution and not merely the recited compound. All amendments and new claims are within the scope of the previously pending claims. No new matter is introduced.

Claim Rejections - U.S.C. § 102

Sanechika et al.

Applicant has deleted buffer layer materials as the active component of the solution from the new claims 10-17 to overcome any reassertion of *Sanechika* as an anticipating reference. Notwithstanding, Applicant maintains the traverse previously asserted against *Sanechika* read with JP 02227285 A1 for the reasons given in earlier filed remarks, and also because the only styrene oligomer noted by Applicant in reviewing *Sanechika* was that disclosed in Column 36, lines 35-45, which is at least a monosubstituted styrene, optionally, bisubstituted. The aromatic ring in the styrene disclosed must have a $C_1 - C_{10}$ alkyl substituent in the *para* position (this is R_5) and may optionally have $-CH_3$ substituted on the vinyl backbone of the styrene monomer (this is R_6). The JP '7285 reference discloses only "styrene oligomer" as a component in the buffer layer and neither *Sanechika* nor JP '7285 teach whether a substituted styrene has buffer properties. As noted previously, *Sanechika* is altogether silent as to organic active materials as constituting Component B, and JP '7285 is silent as to whether the styrene oligomer recited

therein as a buffer layer component may be alkyl substituted in the manner shown in *Sanechika*. Therefore, it is not absolutely clear that *Sanechika* does, in fact, disclose a styrene oligomer that would be suitable as a buffer material, not does JP '7285 expressly limit its oligomer to a dimer, trimer or tetramer as does *Sanechika*. Nonetheless, claims 10-17 have been added so that at least some of the currently pending claimed subject matter should be allowable on continued examination by removing *Sanechika* in light of JP '7285 as an anticipating reference. Applicant further respectfully asserts that even if the styrene oligomer in *Sanechika* would be a suitable buffer, this reference does not enable any of the pending claims, and therefore does not anticipate the invention.

Claim Rejections – 35 U.S.C. § 103

Applicants respectfully submit that the claim amendments render moot or otherwise overcome this rejection, and respectfully request that it be withdrawn.

Double Patenting

Claims 1-4 are provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claim 15 of copending Application No. 10/669,403. Applicant respectfully maintains the traverse of this rejection on the general principle that the inventions claimed in the copending applications are not the same, for reasons previously given, and because *composition* and *solution* do not necessarily have the same scope in that *solution*, especially as here, is more limited. The claims relate to a binary liquid solution comprising the solvent and the active material.

As noted previously, claim 15 of copending Application No. 10/669,403 is drawn to a *composition* comprising (i) an active material and (ii) *at least one* material selected from compounds of the given structure. Claim 1, by contrast, in this application recites a *solution* comprising (i) an organic active material and (ii) *a* compound of the given structure. The R_f components are different in that they are limited to C_2 to C_3 fluorinated alkyl in the '403 application but may be C_1 to C_{10} in the present application. In addition, the R substituent is optional in the '403 application whereas it is required in the present application.

Just because there may be some overlap in the claimed subject matter does not establish "same invention" or statutory-type double patenting. The inventions must actually be *the same* for statutory double patenting to apply. The test recommended by the MPEP for determining whether a double patenting rejection under 35 U.S.C. § 101 is proper is: whether a claim in the

application under review could be literally infringed without literally infringing a corresponding claim in the co-pending applications. MPEP 804.II.A. If this literal infringement test is not met, then a statutory or "same invention" double patenting rejection is improper. The burden of establishing a prima facie case of same invention double patenting lies with the Office. Where sufficient evidence to support a prima facie double patenting rejection has not been provided, the rejection is improper. See *Ex parte Davis*, 56 USPQ2d 1434 (BPAI 2000)(unpublished) at 1437-38. Here, the literal infringement analysis (alternatively stated, whether the claims of the application under review and those of the copending application(s) cannot be literally infringed without infringing each other) has not been performed in this case. On this basis, the rejection should be withdrawn.

The literal infringement test alluded to above and recited in the MPEP was established by the CCPA in 1970 in the case of *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). This opinion and subsequent practice establish that in the area of double patenting, inventions are either the same, obviously variant, or nonobviously variant. For statutory double patenting to apply, the inventions in question must be identical, that is, the subject matter must be identical. Please see *Vogel* at 164 USPQ 621-22. The literal infringement test has not been applied in this case and in any event cannot be met. A terminal disclaimer has already been filed in this case. Accordingly, this rejection should be withdrawn.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully submits that the above referenced application is in condition for allowance and a notice of allowance, or at least a notice indicating allowability of certain claims, is earnestly solicited.

Respectfully submitted,

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